IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6966 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANISH H. DAMANI, GENERAL SECRETARY

Versus

DIRECTOR,GOVERMENT PRINTING & STATIONERY

Appearance:

MR NIKHIL S KARIEL for MR BP TANNA for Petitioner

MR SP HASURKAR for Respondent No. 1

Mr. D.P. JOSHI for State, Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 15/09/2000

ORAL JUDGEMENT

#. The petitioner was working as Assistant Compositor at the Government Printing Press at the relevant time. It is claimed in the petition that he was General Secretary of Gujarat State Government Press Employees Federation.

The petitioner conveyed certain information to the Press which was published in 'Sandesh' Newspaper of 24th March 1987, a copy of which is annexed to the petition at Annexure 'A'. In view of the allegations made in the press without giving any detail, the petitioner was called upon by a letter dated 29th April 1987, vide Annexure 'B', to substantiate the allegations, so that an inquiry can be held if there is any substance in the allegations. The petitioner addressed a letter stating that he is a 'protected workman', and no action can be taken against him for the statement made by him before the press, and made further allegations in the said letter. By letter dated 27.5.1987, vide Annexure 'D', the petitioner's attention was drawn to Rule 9 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, (hereinafter referred to as the Rules). He was informed that he has committed a breach of the Rules and, therefore, he should forward his explanation within a period of 15 days. The petitioner, vide Annexure 'E', addressed a letter to the Secretary, interalia stating that the allegations made therein are true and he has got documents to show that whatever he has alleged is true, and he should be given permission to file a petition in the High Court as he has been called upon to produce the documents and was being tortured mentally. It seems that, vide Annexure 'F' dated 1.8.1987, again the petitioner was asked to give name of the persons indulging in the activities alleged by him, to produce the relevant evidence pointing to the guilt of the persons against whom allegations were made within a period of seven days, failing which he should tender his explanation as to why action should not be taken. Vide Annexure 'G', the petitioner addressed a letter to Deputy Secretary, making allegations against the Department, and requesting him to make inquiry. It may be noted that he has not submitted any explanation before the competent authority. He has not produced any documentary evidence supporting the allegations made by him. Ultimately the authority took the decision, vide Annexure 'J', withheld promotion for a period of seven years. It is against this order this petition is preferred.

#. Learned advocate appearing for the petitioner was asked whether the order is appellable or not, and he replied that he may be granted a weeks' time to examine the law on this point. This petition, filed in the year of 1987, is taken up for final hearing in the year 2000, after almost 12 years. To ask for time even at this belated stage is inappreciable and atleast at final hearing stage. Hon'ble the Chief Justice has made special arrangements to hear the old matters. All the

Hon'ble Judges of this Court are taking up old matters on Fridays sitting single, except in urgent cases for some matters the Division Bench/es is/are constituted. If adjournments are sought on such grounds, the purpose for which My Lord the Chief Justice has made this special assignments will get frustrated. It is not that matters are brought from office and are called out. Matters are notified and all the learned Advocates are made aware about the boards. Hence the ground on which adjournment is sought is not proper.

#. Gujarat Civil Services (Discipline & Appeal) Rules, 1971 provides for appeal. The instant case is covered by Rule 18. As per Rule 18, appeal was required to be preferred within a period of 45 days from the date of the order. In the instant case, the order is dated 10.11.1987. The petitioner has not preferred any appeal within 45 days. However, he has filed this petition on 29.12.1987. Reading Rule 18, it is obvious that the order imposing penalty of stoppage of promotion is appellable, and the appeal lines before the officer immediately superior to the officer who has passed the order. In the instant case, the order is made by Director, Government Printing & Stationery. This order could have been challenged before the appellate forum. When it was pointed out to the learned Advocate that in view of the provisions aforesaid, the petitioner ought to have preferred an appeal, the learned advocate stated that the purpose would not be served by preferring an appeal. He further submitted that there is no question of any misconduct and, therefore, there was no question of calling upon the petitioner to render his explanation or to initiate inquiry to find out the truth or otherwise, and, therefore, the order itself is bad.

#. It is required to be noted that the authority rendering a decision has taken into consideration the allegations made, and, thereafter, has called upon the petitioner to place before it the documents pointing to the guilt of the officers; However, the petitioner has failed not once but twice, and it seems that he is of the view that he being a protected workman under the Industrial Disputes Act, no action can be taken against him. This is what transpires from the letter addressed by the petitioner, a copy of which is produced at Annexure 'C'.

#. The allegations made in the press are as under:-

(i). In the Government Press, by committing irregularities, the higher officers have become

multi-millionaries . Huge machineries are purchased, and commission is being received.

(ii). Imported machineries which are in working condition are declared condemned.

(iii). Machineries are sold at a negligible price.

(iv). There is large scale irregularities in appointment of staff; over-aged and unqualified persons are being appointed. Persons who are relatives are being employed. Persons are being appointed on auction basis, i.e. auction in the vegetable market.

(v). All commodities are purchased at a rate higher than the rate available in the market.

(vi). Majority of the printing work is done at private presses i.e. outside and the officers are protecting their interest by providing work to the private press.

(vii) Consideration is accepted even for transportation of the material.

(viii) For closure of lottery, the policy of the officers of Photolitho Press is responsible.

The petitioner stated before the press that an inquiry is required to be held in this behalf.

#. It is very clear from the aforesaid allegations that the petitioner has not named any officer. It is not the case of the petitioner before the press that the Director himself is indulging in these irregularities or illegalities. As a matter of fact, he has made wild allegations, without giving any details with regard to the date, name of the persons, etc. Therefore, reading the news item, it appears that Director asked the petitioner to place before him specific evidence pointing to the guilt of the person and their names. That was obviously with a view to make an inquiry so that if any officers or persons are indulging in malpractices, action can be taken against such persons.

#. On behalf of the petitioner, learned advocate stated that Mr. P.D. Thakkar himself was the person making an inquiry. However, when a specific question was put to him as to when Mr. P.D.Thakkar joined the Department, he had no answer. In Government service, persons are transferred from time to time. If the present officer has taken charge before few days, then nothing prevented the petitioner from disclosing the material before him. Even no allegations are made against him. Before this Court, the petitioner has not placed any material substantiating the wild allegations made in the press.

#. The contention of the learned advocate is that the statement made to Press does not amount to 'misconduct' and action cannot be taken against the petitioner for the same. Learned advocate placed reliance on a decision of this Court (Coram: A.P. Ravani, J.) in Appeal from Order No. 331 of 1984 delivered on 2nd January 1985. It is required to be noted that the Appeal from Order was against an inter-locutory order and not against the final decision. However, in that case, the petitioner employee was prepared to express his regrets if the feelings of any officer of the Corporation were hurt on account of the confidential letter written by him to the Chairman. He was even prepared to tender apology and accept any minor penalty if it was felt that the image of the Corporation had been tarnished on account of the allegations of corruption made by him. However, the respondent Corporation adopted a stiff attitude, and, therefore, the Court had to proceed with the matter. The Court pointed out that the petitioner did not make proper inquiry and did not obtain sufficient evidence before making the allegations but that is the reason why he wrote a confidential letter addressed to the Chairman of the Corporation and requested to make an inquiry. The Court expressed an opinion that such complaint if made against the officers serving in public undertaking would not and should be considered, prima facie, as misconduct. The Court further observed that since there is basis for writing such a letter, it cannot be said that for writing such letter, there is misconduct. In the instant case, the question involved is not writing a confidential letter to the authority, but making wild allegations in the Press. The matter could have been looked at from a different angle, had the petitioner written a confidential letter to the appropriate authority. The petitioner has not cared to intimate in writing to the appropriate authority about the alleged fraud or malpractices at all. Even the Officer requested him to produce material so as to enable the authority to make an inquiry. The petitioner refused to produce any material by claiming privilege stating that he is a protected workman under the provisions of the Industrial Disputes Act.

#. Industrial Disputes Act, 1947 makes a provision for 'protected workman' but for a very limited purpose. Sub-section 3 of Sec. 33 of the ID Act provides for 'protected workman'. The said section reads as under:

"33.(3) Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an

industrial dispute, take any action against any protected workman concerned in such dispute-

(a). by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before commencement of such proceedings; or,

(b). by discharging or punishment, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation; For the purpose of this sub-section, a 'protected workman' in relation to an establishment, means a workman who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

##. The concerned workman is required to be recognised as a protected workman for a limited purpose, and it does not permit him to make allegations, and that too, of a wild nature. When the petitioner was called upon to produce material, he has failed not once but twice. That clearly indicates that he had no material with him and the allegations are false. Even before the Court he has not placed any material, though in a letter he said that he should be permitted to file a writ petition before this Court against the malpractices. The petitioner has indirectly threatened the authority taking action that he will move this Court. As the petitioner failed to produce any material before the concerned authority, I am of the view that the authority has committed no error in arriving at the conclusion. It was the duty of the petitioner to place before the authority the relevant records. It was his duty even thereafter to place before this Court along with the petition the relevant records, but he has not produced any material.

##. In the result, I find no substance in this matter. This petition is, therefore, rejected. Rule is discharged. No order as to costs.

csm./ (B.C. PATEL, J.)